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09/574,836	05/19/2000	Jean-Claude Engelaere	9189-002	1351

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EXAMINER	
EGAN, BRIAN P	

ART UNIT	PAPER NUMBER
1772	12

DATE MAILED: 11/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-12

Office Action Summary	Application No. 09/574,836	Applicant(s) ENGELAERE, JEAN-CLAUDE	
	Examiner Brian P. Egan	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 August 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26 and 34-39* is/are pending in the application.

4a) Of the above claim(s) *34-39* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on *26 August 2002* is: a)☒ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Claims 27-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method of making a resealable package, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 11.

2. Newly submitted claims 34-39 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 34-39 are directed at a method of making a resealable package. The invention is distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different products or (2) that the product as claimed can be made by another and materially different process (MPEP Sec. 806.05(f)). In the instant case the product as claimed can be made by another and materially different process, such as by blow molding or roll coating.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 34-39 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on August 26, 2002 have been accepted by the Examiner. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Specification

4. Pursuant to the applicants amendments and remarks, the Examiner has withdrawn the objections to the Specification in relation to the use of prime numbers and "PE" terminology from the previous office action, Paper No. 9.

5. The Examiner maintains the objection of the Abstract from the previous office action, Paper No. 9. The abstract of the disclosure is objected to because of its use of legal phraseology. The Examiner suggests removing the term "comprising" from the abstract and replacing it with non-legal terminology. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. The 35 U.S.C. 112, first paragraph rejection of claims 1, 13-16, 20, and 25 from the previous office action has been withdrawn by the Examiner.

8. The 35 U.S.C. 112, second paragraph rejection of claims 1, 7-10, 13, 16, 18-20, 22, and 26 from the previous office action has been withdrawn by the Examiner.

9. Claims 1 and 20 stand rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. The term "interposed" as used by the applicant is unclear. As defined by *Webster's II New Riverside University Dictionary*, "interpose" means to insert or introduce between other parts or elements." None of the layers being "interposed" in the claim limitations are being

inserted between the layer that they are being "interposed" upon, but rather are only being joined and/or placed adjacent to those layers. Proper clarification and/or correction are required.

10. Claims 1 and 20 are further rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. The term "structure" in line 5 of each of the aforementioned claims is unclear. It is unclear whether the structure that the bonding layer is adjacent and/or joined to is actually part of the container or lid, or if it is a completely distinct element not part of either the container or lid. Proper clarification and/or correction are required.

11. Claims 1, 3, 5-6, 9-10, 18-20, 22, and 26 are rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. The aforementioned claims contain method limitations that are given little to no patentable weight in article claims absent a demonstration of unexpected results. Specifically, the method limitations are as follows:

Claim 1 – "welding along a seam to form a welded seam";

Claim 3 – "said structure is joined to the support layer by lamination";

Claim 5 – "said structure is joined to the support layer by extrusion-lamination";

Claim 6 – "the complexable layer is joined to the support layer by hot-calendaring";

Claim 9 – "said container is thermoformed";

Claim 10 – "in which the packaging is opened by tearing and wherein the tearing takes place within the pressure sensitive adhesive layer";

Claim 18 – "said structure is obtained by collapsing a coextrusion bubble";

Claim 19 – "the coextrusion bubble is collapsed in an oxidizing medium";

Claim 20 – "wherein the second face of the tearable-welding layer and the second face of the welding layer are joined by welding along a seam to form a welded seam";

Claim 22 – "in which said container is thermoformed"; and

Claim 26 – "said structure is obtained by collapsing a coextrusion bubble."

The Examiner suggests limiting the claim language to the article itself and the physical and chemical properties extending therefrom. Proper clarification and/or correction are required.

12. Claims 1 and 20 are further rejected under 35 U.S.C. 112, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. The phrase "optionally" has been used excessively, thereby rendering the claims indefinite. To have both an optional bonding layer and an adhesive with optional sublayers makes the invention unascertainable. What is the specific embodiment that the applicant is attempting to claim? The Examiner suggests rewording the claims such that either the bonding layer exists or it does not, and the adhesive either comprises sublayers or it does not in order to facility clarity. Proper clarification and/or correction are required.

Claim Rejections - 35 USC § 102

13. The 35 U.S.C. 102(b) rejection under Newman et al. (#4,810,541) of claims 1, 6, and 14 from the previous office action has been withdrawn by the Examiner. Please refer to the new grounds of rejection under Newman et al. detailed below.

14. The 35 U.S.C. 102(e) rejection under Beeuwsaert (#6,345,726) of claims 1, 6, 7-10, 14, and 16 from the previous office action has been withdrawn by the Examiner. Please refer to the new grounds of rejection under Beeuwsaert detailed below.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16. Claims 1, 3, 5-6, 9-10, 14, 20, 22, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman et al. (#4,810,541) in view of Hansen (#5,512,124) and McClintock et al. (#5,037,138).

Newman et al. teach a re-closable packaging comprising a container (Fig. 2, #11) having a support layer (Fig. 2, #18), a complexable layer (Fig. 2, #14 and #17), an ethylene vinyl acrylate adhesive layer (Fig. 2, #15 and #17), and a tearable polyethylene welding layer (Fig. 2, #19) wherein the complexable layer, adhesive layer, and tearable welding layer are laid on the support film (See Fig. 2). The re-closable packaging further comprises a lid (Fig. 2, #13) having a polyethylene welding layer (Fig. 2, #22) and a support layer (Fig. 2, #21 and #23), wherein the tearable welding layer and the welding layer are welded along a seam (Col. 2, lines 60-62; See also Fig. 2). Although Newman does not explicitly state that the aforementioned layers are laid directly on the support layer by hot-calendering, lamitation, or by extrusion-lamination, these limitations are given little to no patentable weight. The method of forming the device is not germane to the issue of patentability of the device itself absent a demonstration of unexpected results.

The applicant contends that Newman et al. fails to teach a pressure-sensitive adhesive but instead teaches an ethylene vinyl acetate adhesive. It is notoriously well known in the art, however, that EVA adhesives may be pressure sensitive adhesives as demonstrated by Hansen (Col. 1, lines 46-56). Furthermore, even if it is argued that the EVA is not a pressure sensitive EVA adhesive as detailed by Hansen, hot-melt EVA adhesives are functionally equivalent to pressure sensitive adhesives in the container art as taught by McClintock et al. (Col. 2, lines 35-39). Therefore, it would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicants invention was made to have used either a hot-melt EVA adhesive (pressure-sensitive or otherwise) or any other form of PSA other than an EVA PSA since hot-melt EVA adhesives are functionally equivalent to pressure sensitive adhesives.

17. Claims 1, 3, 5-6, 7-10, 14, 16, 20, 22, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeuwsaert (#6,345,726).

Beeuwsaert teach a re-closable packaging (see Abstract) comprising a container (see Fig. 1) having a support layer (Fig. 1, #5), a complexable layer (Fig. 2, #9 and #10), a pressure-sensitive adhesive layer (Fig. 1, #6), and a tearable polyethylene welding layer (Fig. 1, #7; Fig. 2, #s 9-13) wherein the complexable layer, pressure sensitive adhesive layer, and tearable welding layer are laid on the support film (see Fig. 1). The re-closable packaging further comprises a lid (Fig. 1, #3) having a polyethylene welding layer (Fig. 2, #14) and a support layer (Fig. 2, #s 15-18), wherein the tearable welding layer and the welding layer are welded along a seam (See. Fig. 2; Col. 3, lines 55-56). The complexable layer and tearable welding layers have identical compositions (Compare Fig. 2, #s 12-13 with Fig. 2, #s 9-10; Col. 3, line 52 to Col. 4, line 53). Although Beeuwsaert does not explicitly state that the aforementioned layers are laid directly on

the support layer by hot-calendering, lamination, or extrusion-lamination, these limitations are given little to no patentable weight. The method of forming the device is not germaine to the issue patentability of the device itself absent a demonstration of unexpected results. Beeuwsaert further discloses that the container is either rigid or flexible and is thermoformed (Col. 2, lines 45-46). When the lid is removed from the container, the tearing at the seam takes place within the adhesive layer thereby exposing a portion of the adhesive layer (See Fig. 3, area L).

The applicant contends that Beeuwsaert fails to teach the complexable layer being situated between the pressure sensitive adhesive and support layers. It would have been obvious to one of ordinary skill in the art at the time applicants invention was made, however, to rearrange the layers such that the complexable layer is situated between the PSA and support layers since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Beeuwsaert would not have been prevented from rearranging the layer formation since he teaches that the multilayered structure is used to ensure tightness and impermeability (Col. 4, lines 44-53) and therefore has no restriction on the order of the material layers other than that ensure tightness and impermeability – both of which are accomplishable by arranging the complexable layer between the PSA and the support layer.

18. Claims 2, 4, 11-12, 17-19, 21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeuwsaert (#6,345,726) in view of Spiegel et al. (#3,454,210), the *Material Safety Data Sheet*, the *Encyclopedia of Polymer Science and Technology*, Engelaere (WO 97/19867), and Clerici et al. (#4,791,024).

Beeuwsaert teaches a re-sealable container as detailed above. Beeuwsaert fails, however, to teach a structure comprising a complexable layer, a pressure-sensitive adhesive, and a tearable

welding layer being laid on a support via a binding layer. Beeuwsaert also fails to teach that the pressure sensitive adhesive has a lower melting point than the tearable welding layer, that the pressure-sensitive adhesive is a thermoplastic elastomer-based hot-melt adhesive, and that the structure comprising the complexable layer, pressure-sensitive adhesive, and the tearable welding layer is symmetrical and that the adhesive contains two sub-layers – wherein the structure in this form is obtained by collapsing the coextrusion bubble under oxidizing conditions. Note that all methods of forming, i.e. lamination, extrusion lamination, hot-calendering, and collapsing the extrusion bubble, are given little to no patentable weight within the article limitations of the applicant's claims. Also note that the adhesive layer taught by Beeuwsaert is considered to be a binding layer adhesive. Therefore, to meet the limitations of the aforementioned claims, a pressure sensitive adhesive must be found that meets the limitations of the adhesive within the structure 'C' of the applicant's invention.

Spiegel et al. teach a symmetrical multi-layered welding structure that consists of a pressure sensitive adhesive surrounded by material-equivalent polyethylene layers (see Fig. 5), i.e. a tearable welding layer and a complexable layer (Col. 3, lines 13-15). The pressure sensitive adhesive comprises a thermoplastic elastomer-based hot-melt adhesive (Fig. 5; Col. 3, lines 5-9). Spiegel et al. teach that the package comprises at least one tearable film in the multi-layered structure wherein the collapsing of the co-extrusion bubble is done in an oxidizing medium (Col. 3, lines 1-4; Col. 4, lines 48-49). Although Spiegel et al. does not explicitly state whether the adhesive layer has a melting point lower than that of the welding layer, the property is inherently met as evidenced by the *Material Safety Data Sheet* (see Pentalyn H MSDS – p.3; SBR MSDS –p.4) and the *Encyclopedia of Polymer Science* (p.6-7 of printout from

http://www.mrw.interscience.wiley.com/epst/articles/pst122/sect2.html). With reference to the MSDS and the Encyclopedia of Polymer Science, it is shown that the adhesive components of the adhesive in the Spiegel et al. reference, i.e. Pentalyn H and SBR, both have melting points at 100 degrees Celsius wherein polyethylene has a melting point above 100 degrees Celsius, mainly, from 105-128 degrees Celsius. Spiegel et al. construct a container in the aforemention way for the purpose of providing a package that is easily opened while having a positive reclosable feature (Col. 1, lines 64-66) as well as to increase the free surface energy of the polyethylene layers through the use of oxidative influences (Col. 4, lines 48-49). It would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicant's invention was made to have used the multilayer welding structure for a re-sealable container for the purpose of providing a package that is easily opened while having a positive reclosable feature as well as to increase the free surface energy of the polyethylene layers through the use of oxidative influences as taught by Spiegel et al.

Clerici et al. teach a dismemberable adhesive junction (fig. 2, #10b and #11b) for the purpose of providing a manually readily openable and reclosable member capable of being jointed with another identical or similar element. Therefore, it would have been obvious through routine experimentation to one of ordinary skill in the art to have modified a multilayered structure with opposing equivalent layers with a 2-layered dismemberable adhesive for the purpose of providing a manually readily openable and reclosable member capable of being jointed with another identical or similar element as taught by Clerici et al.

Engelaere teaches a re-sealable container assembly containing a polyurethane binding layer (Page 15, lines 23-26) that attaches the welding and base layers by lamination (Page 9,

lines 23-24), extrusion-lamination (Page 9, lines 18-22), or hot-calendering (Page 9, lines 25-26). The polyurethane adhesive was chosen for the purpose of providing the container with an adhesive with nearly permanent tack properties (Page 9, lines 12-13). Therefore, it would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicant's invention was made to have selected a polyurethane binding layer adhesive for the purpose of providing the container with a nearly permanent tack between layers as taught by Engelaere.

Thus, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have modified Beeuwsaert to include a multilayered welding structure as taught by Spiegel et al. in order to provide a package that is easily opened while having a positive reclosable feature as well as to increase the free surface energy of the polyethylene layers through the use of oxidative influences. It would also have been obvious to have modified Beeuwsaert to have included a 2-layered adhesive in the multilayered welding structure as taught by Clerici et al. in order to provide a manually readily openable and reclosable member capable of being jointed with another identical or similar element, i.e. attachment of the tearable welding layer to the complexable layer. Finally, although Beeuwsaert teaches a binding layer adhesive, he fails to explicitly state the composition of the adhesive. Therefore, it would also have been obvious to modify Beeuwsaert to have include a polyurethane-based binding layer that can be either laminated, extrusion laminated, or hot-calendered as taught by Engelaere in order to provide the container with a nearly permanent tack between layers.

19. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beeuwsaert ('726) in view of Takata et al. (#5,167,339).

Beeuwsaert teaches a re-sealable container as described above. Beeuwsaert fails to teach an adhesive comprising from 5-25% by weight of filler or processing agent within the adhesive.

Takata et al., however, teaches a resealable container that has an adhesive that contains between 0 and 95% filler for the purpose of providing a container with a desirable peel strength as well as to provide an adhesive with high heat resistance (Col. 4, lines 51-64). It would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicant's invention was made to have modified an adhesive layer within a re-sealable container to include between 0 and 95% filler for the purpose of providing a container with a desirable peel strength and high heat resistance as taught by Takata et al.

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have modified Beeuwsaert to include filler within the adhesive layer of the re-sealable container as taught by Takata et al. in order to provide a container with a desirable peel strength and high heat resistance.

20. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beeuwsaert ('726) in view of Jones et al. (#5,882,749).

Although Beeuwsaert teaches polyethylene-based weldable layers, he fails to explicitly teach the use of metallocene polyethylene.

Jones et al., however, teach the use of polyethylene metallocene in the outer weldable layers of a re-closable package for the purpose of producing a heat sealable layer (Col. 6, lines 16-20). It would have been obvious through routine experimentation to one of ordinary skill in

the art at the time applicant's invention was made to have used metallocene polyethylene in a resealable container structure for the purpose of producing a heat sealable layer as taught by Jones et al.

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have modified Beeuwsaert to specifically use metallocene polyethylene as taught by Jones et al. in order to produce a heat sealable layer.

Response to Remarks

21. Applicant's arguments with respect to the Newman et al., Beeuwsaert, and Spiegel et al. references have been considered but are moot in view of the new ground(s) of rejection. Note that the applicants have cited *In re Rijckaert* to support their contention that it is improper to argue inherency under an obviousness rejection. Note, however, that this is limiting the scope of the actual decision. In *Rijckaert* the court stated the following:

> To support the Board's affirmance of the rejection, the Commissioner points out that in the recording art, the exact matching of signal time to recording time is an optimal condition, and that this condition would be met by fulfilling the claimed relationship While the condition described may be an optimal one, it is not "inherent" in Awamoto. Nor are the means to achieve this optimal condition disclosed by Awatomo, explicitly or implicitly. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency. That which may be inherent in not necessarily known. Obviousness cannot be predicated on what is unknown. Such a retrospective view of inherency is not a substitute for some teaching or suggestion supporting an obviousness rejection.

In re Rijckaert, 9 F.3d 1531, 1533-34 (1993).

Here, the inherent properties referred to by the Examiner, i.e., the melting points of the adhesive and polyethylene layers, are neither "optimal" properties nor are they "unknown" properties. It would have been known to one of ordinary skill in the art at the time applicants invention was made to have known the melting points of specific adhesives and polyethylene layers – whether implicitly or explicitly stated – and therefore not improper (or illegal) to inherently claim those

properties. Furthermore, the MSDS and Encyclopedia of Polymer Science reinforce the Examiners contention.

Also, in response to the Applicant's argument that the mechanism depicted in Newmann is directed to a separation at the interface between layers 22 and 19 and fails to separate in the flange area of the container, the limitations on which the Applicant relies, i.e. Fig. 2 of the Applicant's disclosure, are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-devices Inc.*, 7 USPQ 2d 1064.

22. In response to the applicants argument that the Clerici et al. reference is non-analogous art, it has been held that the determination that a reference is from a non-analogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *In re Wood*, 202 USPQ 171, 174. In this case, the reference is reasonably pertinent to the particular problem with which the inventor was involved. First, the applicant contends that Clerici et al. is concerned with adjoining fabric. This is a narrow reading of Clerici et al. Clerici et al. state that:

> By way of example, in the case of an adhesive element in tape forms, this carrier can consist of a fabric, but it is understood that a number of different materials can be used, provided that they have a sufficient consistency and resistance relative to the elastomeric material so as to make the separation possible of the jointed surfaces without jeopardizing the functionality of the whole system.

Col. 3, lines 32-39.

Therefore, Clerici et al. actually state that any material can be used insofar as it has a sufficient consistency and resistance relative to the elastomeric material. Second, the reference is used to demonstrate a 2-layered adhesive and its use in a situation wherein two opposing substrates are

intended to be disjointed – here, the applicant is intending the lid to be disjointed from the container. Therefore, the 2-layered adhesive system in Clerici et al. is reasonably pertinent to the particular problem with which the inventor was involved.

23. In response to the applicants arguments that there is no suggestion to combine the reference of Beeuwsaert with Spiegel et al., Clerici, WO '867, Takata et al., and Jones et al., the Examiner recognizes that refereces cannot be arbitrarily combine and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya,* 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

Here, it would have been obvious to make each combination suggested by the Examiner.

First, taking Beeuwsaert and Spiegel et al. as a whole, it would have been obvious to not only form a container and lid structure, but form a container and lid structure such that it is resealable while also increasing the free surface energy of the polyethylene layers.

Second, taking Beeuwsaert with Clerici as a whole, it would have been obvious to modify an adhesive layer such that it comprises a multilayered adhesive in order to provide a manually readily openable and reclosable member capable of being joined with similar or identical elements – thereby improving the functionality of the adhesive layer.

Third, taking Beeuwsaert with WO '867 as a whole, it would have been obvious to select an adhesive material for a lid and container structure that exhibits nearly permanent tack properties. Despite the applicants contention that WO '867 fails to teach all of the layers as claimed, WO '867 is used merely to demonstrate the effectiveness of using a polyurethane binding layer in a container structure in order to facilitate ideal tack properties and whether or not WO '867 teaches all material layers is irrelevant.

Fourth, taking Beeuwsaert with Takata et al. as a whole, it would have been obvious to combine the two references since Beeuwsaert alone teaches a resealable container. Therefore, any reference teaching an improvement upon the resealability of the container is motivation in itself to modify Beeuwsaert. Here, Takata teaches the use of filler to improve peel strength and heat resistance of the adhesive. Given that Takata et al. improve a resealable adhesive layer by increasing its heat resistance and improving the peel strength is more than adequate motivation to modify the adhesive composition of Beeuwsaert.

Finally, taking Beeuwsaert with Jones et al. as a whole, it is not only demonstrated generally by Beeuwsaert that polyethylene is a desirable component for a weldable layer, but also demonstrated by Jones et al. that a specific form of polyethylene, i.e. metallocene polyethylene, is a specific polyethylene that demonstrates ideal heat sealable properties. Therefore, Beeuwsaert teach the general use of polyethylene, which in itself includes all forms of polyethylene, and it would therefore be obvious to select metallocene polyethylene from the group of polyethylenes since metallocene PE has been shown to demonstrate ideal heat sealable properties – a property desired by Beeuwsaert given that the PE layers are to be welded together.

24. Finally, the Examiner generally responds to the applicants contentions that the references fail to teach the specific methods of forming the container and lid structure. These arguments are irrelevant absent a demonstration of unexpected results. The aforementioned references, taken as a whole, teach the entire structure of the applicants claimed invention. The method of forming the device is not germane to the issue of patentability of the device itself.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Egan whose telephone number is 703-305-3144. The examiner can normally be reached on M-F, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

BPE
November 12, 2002

NASSER AHMAD
PRIMARY EXAMINER
Acting SPE